

**Senate File 323 - Introduced**

SENATE FILE 323

BY GUTH

**A BILL FOR**

1 An Act prohibiting employers from engaging in certain actions  
2 relating to infectious diseases and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 84A.5, subsection 4, Code 2023, is  
2 amended to read as follows:

3 4. The division of labor services is responsible for the  
4 administration of the laws of this state under [chapters 88,](#)  
5 [88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 92, and](#)  
6 [94A, and 94B,](#) and [sections 73A.21 and 85.68.](#) The executive  
7 head of the division is the labor commissioner, appointed  
8 pursuant to [section 91.2.](#)

9 Sec. 2. Section 91.4, subsection 2, Code 2023, is amended  
10 to read as follows:

11 2. The director of the department of workforce development,  
12 in consultation with the labor commissioner, shall, at the  
13 time provided by law, make an annual report to the governor  
14 setting forth in appropriate form the business and expense of  
15 the division of labor services for the preceding year, the  
16 number of remedial actions taken under [chapter 89A,](#) the number  
17 of disputes or violations processed by the division and the  
18 disposition of the disputes or violations, and other matters  
19 pertaining to the division which are of public interest,  
20 together with recommendations for change or amendment of the  
21 laws in [this chapter](#) and [chapters 88, 88A, 88B, 89, 89A, 89B,](#)  
22 [90A, 91A, 91C, 91D, 91E, 92, and 94A, and 94B,](#) and section  
23 85.68, and the recommendations, if any, shall be transmitted  
24 by the governor to the first general assembly in session after  
25 the report is filed.

26 Sec. 3. NEW SECTION. **94B.1 Definitions.**

27 For purposes of this chapter, unless the context otherwise  
28 requires:

29 1. "*Commissioner*" means the labor commissioner appointed  
30 pursuant to section 91.2 or the commissioner's designee.

31 2. "*COVID-19*" means the same as defined in section 686D.2.

32 3. "*Employee*" means an individual who is employed in  
33 this state for wages by an employer. "*Employee*" includes a  
34 prospective employee.

35 4. "*Employer*" means the same as defined in section 96.1A,

1 but does not include a public employer as defined in section  
2 20.3 or an employer who receives reimbursement through the  
3 federal Medicare or Medicaid programs.

4     **Sec. 4. NEW SECTION. 94B.2 Prohibited employer actions —**  
5 **vaccination status and infectious disease testing.**

6     An employer is prohibited from carrying out any of the  
7 following actions:

8     1. Inquiring about any information regarding an employee's  
9 vaccination status, including but not limited to vaccination  
10 against COVID-19. This subsection does not apply when the  
11 duties of the employee's position, in accordance with federal  
12 or international law, require disclosure of such information.

13     2. Inquiring about the results of a test for an infectious  
14 disease including but not limited to COVID-19 taken by an  
15 employee. This subsection does not apply when the duties of  
16 the position, in accordance with federal or international law,  
17 require disclosure of such results.

18     3. Conducting a test for an infectious disease including  
19 but not limited to COVID-19 on an employee to determine a past  
20 or current infection. This subsection does not apply when  
21 the duties of the position, in accordance with federal or  
22 international law, require that such a test be conducted.

23     **Sec. 5. NEW SECTION. 94B.3 Complaints — commissioner**  
24 **determination.**

25     1. An employee may report a violation of section 94B.2 to  
26 the commissioner. The commissioner shall establish a form for  
27 such complaints. Upon receipt of a complaint, the commissioner  
28 shall notify the employer in writing of the complaint. The  
29 commissioner shall determine within thirty calendar days if the  
30 complaint is valid and shall notify the employer and employee  
31 in writing of the commissioner's determination.

32     2. An employee or employer may contest the commissioner's  
33 determination pursuant to subsection 1 in writing within thirty  
34 calendar days, or the determination shall be final. Such a  
35 contest shall be treated as a contested case under chapter 17A.

1     Sec. 6. NEW SECTION.   **94B.4 Penalties.**

2     1. Upon a final determination pursuant to section 94B.3,  
3 subsection 2, or after the time for seeking judicial review in  
4 a contested case proceeding has expired or all judicial review  
5 has been exhausted, the commissioner shall impose a penalty on  
6 an employer in accordance with this section.

7     2. Upon a first violation, the commissioner shall provide  
8 the employer with a written warning. Upon a second violation,  
9 the commissioner shall impose a two hundred fifty dollar  
10 civil penalty. Upon a third or subsequent violation, the  
11 commissioner shall impose a five hundred dollar civil penalty.  
12 The commissioner shall remit penalties collected pursuant to  
13 this subsection to the treasurer of state for deposit in the  
14 general fund.

15    3. *a.* Upon a third violation, and notwithstanding any  
16 provision of law to the contrary, the employer shall be  
17 disqualified from the provisions of chapters 85, 85A, 85B,  
18 86, and 87. The disqualified employer shall be liable to an  
19 employee for a personal injury in the course of and arising out  
20 of the employment, and the employee may enforce the liability  
21 by an action at law for damages. In such an action, the  
22 provisions of section 87.21, subsections 1, 2, and 3, shall  
23 apply.

24    *b.* The commissioner shall establish a process for an  
25 employer subject to disqualification under this subsection and  
26 an employee to pursue in good faith an informal settlement of  
27 the dispute and a form for the employer and employee to submit  
28 to the commissioner if an informal settlement is reached. The  
29 commissioner shall attempt to facilitate informal settlement  
30 of disputes. The employer may allege in writing to the  
31 commissioner that the employee is not acting in good faith  
32 to resolve the dispute. If the commissioner determines the  
33 employee is not acting in good faith to resolve the dispute,  
34 or if an informal settlement is reached, the employer's  
35 disqualification under paragraph "a" shall cease. If an

1 employee contests the commissioner's determination that the  
 2 employee is not acting in good faith under this paragraph, such  
 3 a contest shall be treated as a separate contested case under  
 4 chapter 17A.

5 4. Upon a fourth or subsequent violation, and  
 6 notwithstanding any provision of law to the contrary, the  
 7 employer shall be permanently disqualified from the provisions  
 8 of chapters 85, 85A, 85B, 86, and 87. The employer shall be  
 9 liable to an employee for a personal injury in the course of  
 10 and arising out of the employment, and the employee may enforce  
 11 the liability by an action at law for damages. In such an  
 12 action, the provisions of section 87.21, subsections 1, 2, and  
 13 3, shall apply.

14 Sec. 7. NEW SECTION. **94B.5 Procedures — enforcement —**  
 15 **rules.**

16 1. The commissioner shall establish procedures to implement  
 17 and enforce this chapter. The commissioner may conduct  
 18 investigations, hold hearings, receive evidence, and take such  
 19 other actions the commissioner deems necessary or appropriate  
 20 to implement and enforce this chapter.

21 2. The commissioner shall adopt rules pursuant to chapter  
 22 17A to administer this chapter.

23 Sec. 8. NEW SECTION. **96.5B Refusal of COVID-19 vaccination**  
 24 **— no disqualification.**

25 Notwithstanding any other provision of this chapter to the  
 26 contrary, an individual who is discharged from employment  
 27 for refusing to comply with an inquiry or test required  
 28 by an employer in violation of section 94B.2 shall not be  
 29 disqualified for benefits on account of such discharge if the  
 30 employer is subject to a penalty under section 94B.4 for the  
 31 violation.

32 EXPLANATION

33 The inclusion of this explanation does not constitute agreement with  
 34 the explanation's substance by the members of the general assembly.

35 This bill prohibits an employer, as defined in the bill, from

1 carrying out specified actions against an employee relating to  
2 infectious disease, including COVID-19. The prohibited actions  
3 are inquiring about any information regarding an employee's  
4 vaccination status, inquiring about the results of a test for  
5 an infectious disease taken by an employee, and conducting a  
6 test for an infectious disease on an employee to determine a  
7 past or current infection. These actions are permitted when  
8 required for the duties of an employee's position in accordance  
9 with federal or international law.

10 The bill establishes a process for an employee to submit a  
11 complaint of a violation to the labor commissioner and for the  
12 commissioner to determine if a complaint is valid.

13 The bill establishes penalties for an employer who engages  
14 in a prohibited action. The penalties include civil monetary  
15 penalties that increase as an employer engages in subsequent  
16 violations. On a third or subsequent violation, an employer is  
17 also subject to disqualification from provisions of the Code  
18 pertaining to worker's compensation. A disqualified employer  
19 shall be liable to an employee for a personal injury in the  
20 course of and arising out of the employment, and the employee  
21 may enforce the liability by an action at law for damages.  
22 Procedures applicable to employers who fail to obtain worker's  
23 compensation insurance, which relate to legal presumptions, the  
24 burden of proof, pleadings and defenses, and trial by jury, are  
25 applicable to such an action. The bill provides a process for  
26 informal resolution of disputes relating to a third violation.

27 The bill requires the labor commissioner to establish  
28 procedures to implement and enforce the bill and authorizes the  
29 commissioner to conduct investigations, hold hearings, receive  
30 evidence, and take such other actions the commissioner deems  
31 necessary or appropriate to implement and enforce the bill.

32 The bill provides that an employee who is discharged from  
33 employment for refusing to comply with an inquiry or test  
34 required by an employer in violation of the bill shall not  
35 be disqualified for unemployment benefits on account of such

1 discharge if the employer is subject to a penalty under the  
2 bill for the violation.